

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	8:09CR177
)	
V.)	
)	ORDER
MATTHEW H. ANSELMO,)	
)	
Defendant.)	
)	

This matter is before the court on the defendant motion to vacate under 28 U.S.C. § 2255. Filing No. 75. Under Rule 4 of the *Rules Governing Section 2255 Proceedings for the United States District Courts*, the court must perform an initial review of the defendant's § 2255 motion. See *Rules Governing Section 2255 Proceedings for the United States District Courts*, Rule 4(b) (2011 Ed.). The rules provide that unless "it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief," the court must order the United States Attorney to respond to the motion. *Id.*

The defendant entered a plea of guilty to a charge of mail fraud, in violation of 18 U.S.C. §§ 1341 and 2. The defendant was sentenced to 48 months of imprisonment. His sentence was affirmed on appeal. Filing No. 70. In his § 2255 motion, the defendant alleges that he received ineffective assistance of counsel for failure to call witnesses, subpoena certain individuals and documents, make reasonable investigations, and keep the defendant informed of important developments in the course of prosecution. Filing No. 75.

On initial review, the court finds that it does not plainly appear that the defendant is entitled to no relief, and that the government should be required to answer. On receipt of the government's answer, the court will determine (a) whether to order the parties to submit briefs on the merits, so that the defendant claims may be resolved on the basis of the record and briefs, or (b) whether an evidentiary hearing is required. See *Rules Governing Section 2255 Proceedings for the United States District Courts*, Rule 8(a), (2011 Ed.).

THEREFORE, IT IS ORDERED:

1. On initial review, the court finds that summary dismissal is not appropriate.
2. The United States shall file an answer to the defendant's § 2255 motion within 21 days of the date of this order. Filing No. 75.

DATED this 20th day of June, 2011.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge